

**ASSEMBLY BILL**

**No. 1111**

**Introduced by Assembly Member Simitian**

February 23, 2001

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An act to add and repeal Article 3 (commencing with Section 2960) of Chapter 4 of Part 5 of Division 4 of the Probate Code, relating to adult abuse, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1111, as introduced, Simitian. Adult abuse.

Existing law provides for misdemeanor and felony sanctions, including imprisonment and fines, for offenses involving the abuse of an elder or dependent adult, depending upon the circumstances.

Existing law provides for various procedures for the protection of individuals by the public guardian and by programs implemented by the State Department of Social Services.

This bill would create a pilot program in which each of 3 participating counties would be required to have a financial abuse specialist team in order to participate. The pilot program would be administered by the State Department of Social Services with the goal of reducing incidences of financial abuse perpetrated against mentally impaired elder persons. The bill would require the public guardian to monitor the pilot program.

The bill would appropriate \$150,000 per year for 3 years from the General Fund for the pilot project as provided by the bill.

These provisions would remain in effect until January 1, 2005, when they would be repealed.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Article 3 (commencing with Section 2960) is added to Chapter 4 of Part 5 of Division 4 of the Probate Code, to read:

Article 3. FAST Teams Pilot Program

2960. (a) (1) The Legislature hereby creates a pilot program designed to reduce the number of incidences of financial abuse perpetrated against mentally impaired elder adults.

(2) The State Department of Social Services shall select three counties, one urban, one suburban, and one rural, that have requested participation in the pilot program for implementation of the pilot program. The State Department of Social Services shall apply the following criteria in selecting which of the counties requesting participation in the program may participate in the pilot program:

(A) The existence of a county financial abuse specialist team or the ability of the county to establish a financial abuse specialist team by the time of the commencement of the implementation of the pilot program and in the county.

(B) The existence of sufficient law enforcement personnel with expertise in the assessment of competence, as determined by the State Department of Social Services.

(C) The existence of a law enforcement unit devoted to investigating elder financial abuse and the enforcement of laws applicable to elder abuse.

(D) The pilot program would be coordinated with existing mandated programs affecting financial abuse of mentally impaired elders that are administered by the adult protective services agency of the county.

(b) Any funding appropriated for the pilot program shall be used to assist the public guardian in meeting the additional demands required of the public guardian under the provisions of the pilot program. Not less than 85 percent of the funds appropriated for the pilot program shall be used for the purposes of the program, and not more than 15 percent of the funds appropriated may be used for administrative costs incurred by the public guardian in the pilot program.

(c) The sum of one hundred fifty thousand dollars (\$150,000) per year for three years is appropriated, without regard to fiscal years, from the General Fund to the State Department of Social Services for allocation to participating counties pursuant to paragraphs (1) and (2) for use during the period of the pilot program implemented under this section.

(1) Seventy-five thousand dollars (\$75,000) each year shall be allocated equally between the participating counties.

(2) Seventy-five thousand dollars (\$75,000) each year shall be allocated to each participating county in proportion to the number of cases of financial abuse of elder persons reported in the most recent period for which that information is available to the State Department of Social Services.

(d) Each county shall have a “financial abuse specialist team” (FAST) in order to be eligible to participate in the pilot program. A financial abuse specialist team means a multidisciplinary personnel team, as defined in Section 15753.5 of the Welfare and Institutions Code, to which all of the following apply:

(1) (A) At least one member is trained in the prevention of financial abuse of elder persons.

(B) At least one member is trained in the identification of financial abuse of elder persons.

(C) At least one member is trained in the treatment of financial abuse of elder persons.

(D) At least one member is trained in all of the services specified in subparagraphs (A), (B), and (C).

(E) The financial abuse specialist team contains members who, in the aggregate, are qualified to provide a broad range of services related to the financial abuse of elder persons.

(2) It includes at least one person from each of the following categories:

(A) Psychiatrists, psychologists, marriage, family, and child therapists, clinical social workers, or other licensed mental health professionals.

(B) Public guardian.

(C) Police officers or other law enforcement agents.

(D) District attorney’s office.

(E) Medical personnel with sufficient training to provide information regarding health services.

1 (F) Social workers with experience or training in prevention of  
2 abuse of elder persons.

3 (G) A member of the county adult protective services program.

4 (H) A member of the county long-term care ombudsman  
5 program.

6 (I) A representative of a financial institution, as defined in  
7 subdivision (e) of Section 2961.

8 (J) An attorney proficient in the practice of elder law.

9 (e) The responsibility of monitoring the pilot program in each  
10 county shall be placed on the public guardian. The public guardian  
11 of that county shall prepare an annual report describing the  
12 progress of the pilot program and shall include the following  
13 information:

14 (1) A fiscal summary detailing costs of the pilot program.

15 (2) The number of declarations signed by a peace officer.

16 (3) The number of peace officers in each county that are  
17 members of a FAST.

18 (4) The number of cases in which the public guardian applied  
19 to be appointed conservator of an elder person named in a  
20 declaration signed by a peace officer.

21 (5) The number of cases in which the public guardian or  
22 another person was appointed conservator of an elder person  
23 named in a declaration signed by a peace officer.

24 (6) The total costs and fees awarded to a public guardian  
25 pursuant to Section 2963.

26 (7) The number of arrests and convictions that resulted from  
27 the suspected crime as described in the declaration signed by a  
28 peace officer under Section 2962. A compilation of the total  
29 number of arrests and convictions shall be forwarded on a  
30 quarterly basis to the public guardian from the participating law  
31 enforcement agency of which each signing peace officer is a  
32 member.

33 (8) The number of cases in which there is a recovery of assets  
34 in an amount the theft of which could constitute a felony offense.  
35 A compilation of the total amount recovered shall be forwarded on  
36 a quarterly basis to the public guardian from the participating law  
37 enforcement agency of which each signing peace officer is a  
38 member.

39 (f) Funds received by a public guardian pursuant to this section  
40 may be used, at the discretion of the public guardian, to employ a

1 dedicated worker exclusively assigned to coordinate efforts with  
2 participating FAST members and law enforcement.

3 (g) The pilot program shall be considered a success if the  
4 financial abuse specialist team or a peace officer acting as a  
5 member of, or in consultation with, the financial abuse specialist  
6 team, assists in at least 100 cases per year that have at least one of  
7 the following outcomes:

8 (1) The public guardian or anyone else is appointed as a  
9 conservator of the elder's estate.

10 (2) An arrest is made.

11 (3) There is a recovery of assets in an amount the theft of which  
12 would constitute a felony offense.

13 (h) Each public guardian shall submit the annual report to the  
14 Legislative Analyst's office by February 1. The Legislative  
15 Analyst's office shall compile the annual reports and submit the  
16 compiled document to the Legislature for review by March 1.

17 2961. The definitions contained in this section shall govern  
18 the construction of this chapter, unless the context requires  
19 otherwise.

20 (a) "Declaration" means a document that substantially  
21 complies with the requirements of Section 2964, and is signed by  
22 both a peace officer and another member of the financial abuse  
23 specialist team (FAST) and provided to the public guardian in  
24 accordance with subdivision (b) of Section 2962.

25 (b) "Elder person" means any person residing in this state, 65  
26 years of age or older.

27 (c) "Financial abuse" means a situation described in Section  
28 15610.30 of the Welfare and Institutions Code.

29 (d) "Peace officer" means a sheriff, deputy sheriff, or  
30 municipal police officer, duly sworn under the requirements of  
31 state law, who satisfies any of the following requirements:

32 (1) The sheriff, deputy sheriff, or municipal police officer is a  
33 member of a FAST, and the sheriff, deputy sheriff, or municipal  
34 police officer has completed or participated as a lecturer in a  
35 financial abuse POST training program. "Financial abuse POST  
36 training" means an elder financial abuse training course certified  
37 by the Commission on Peace Officer Standards and Training. The  
38 completion of the course may be satisfied by telecourse, video  
39 training tape, or other instruction. The training shall, at a  
40 minimum, address relevant elder abuse laws, recognition of

1 financial abuse and fraud, assessment of mental competence in  
2 accordance with the standards set forth in Part 17 (commencing  
3 with Section 810), reporting requirements and procedures for the  
4 investigation of financial abuse and related crimes, including  
5 neglect, and civil and criminal procedures for the protection of  
6 victims. The course may be presented as part of a training program  
7 that includes other subjects or courses.

8 (2) The sheriff, deputy sheriff, or municipal police officer has  
9 consulted with a sheriff, deputy sheriff, or municipal police officer  
10 who satisfies the requirements of paragraph (1) concerning the  
11 declaration defined in subdivision (a) and obtained that sheriff's,  
12 deputy sheriff's, or municipal police officer's signature on a  
13 declaration that substantially complies with the form described in  
14 Section 2954.

15 (e) "Financial institution" means any bank, savings and loan,  
16 thrift, industrial loan company, credit union, or any branch of any  
17 of these institutions doing business in the state, as defined by  
18 provisions of the Financial Code.

19 (f) "Property" means all personal property and real property  
20 of every kind belonging to, or alleged to belong to, the elder.

21 2962. (a) A peace officer may issue a declaration, as  
22 provided in Section 2964, concerning an elder person if all of the  
23 following conditions are satisfied:

24 (1) There is probable cause to believe that the elder person is  
25 substantially unable to manage his or her financial resources or to  
26 resist fraud or undue influence.

27 (2) There exists a significant danger that the elder person will  
28 lose all or a portion of his or her property as a result of fraud or  
29 misrepresentations or the mental incapacity of the elder person.

30 (3) There is probable cause to believe that a crime is being  
31 committed against the elder person.

32 (4) The crime is connected to the inability of the elder person  
33 to manage his or her financial resources or to resist fraud or undue  
34 influence, and that inability is the result of deficits in the elder  
35 person's mental functions.

36 (5) The peace officer has consulted with an individual qualified  
37 to perform a mental status examination.

38 (b) If the requirements of subdivision (a) are satisfied, the  
39 peace officer shall provide a signed declaration to the public  
40 guardian of the county. The declaration provided by the peace

1 officer under this subdivision shall be signed by another member  
2 of the FAST who qualifies on the FAST under subparagraph (A),  
3 (E), (F), (G), or (H) of paragraph (1) of subdivision (d) of Section  
4 2960. The declaration shall be transmitted to the public guardian  
5 within 24 hours of its being signed, and may be transmitted by  
6 facsimile. In counties participating in the pilot program under this  
7 article, the public guardian shall immediately forward a copy of a  
8 signed and completed declaration to the dedicated worker  
9 specified in subdivision (f) of Section 2960, if one has been  
10 assigned.

11 (c) (1) Upon receiving a signed declaration from a peace  
12 officer, the public guardian is authorized to rely on the information  
13 contained in the declaration to take immediate possession or  
14 control of the property of the elder person referred to in the  
15 declaration, and may issue a written recordable certification of that  
16 fact as provided for in Section 2901.

17 (2) The mere issuance of the declaration provided by this  
18 section shall not require the public guardian to take possession or  
19 control of property and shall not require the public guardian to  
20 make a determination that the requirements for the appointment of  
21 a conservator are satisfied.

22 (3) A public guardian acting in good faith is not liable when  
23 taking possession or control of property pursuant to this section.

24 (d) (1) If the public guardian takes possession of an elder  
25 person's property pursuant to this section, the public guardian shall  
26 attempt to find agents pursuant to the use of durable powers of  
27 attorney or successor trustees nominated in trust instruments, or  
28 other persons having legal authority under existing legal  
29 instruments, to manage the elder person's estate.

30 (2) If the public guardian is unable to find any appropriate  
31 person to manage the elder person's estate pursuant to paragraph  
32 (1), the public guardian shall attempt to find family members  
33 willing to manage the elder person's estate. If no documents exist  
34 appointing fiduciaries, the public guardian shall follow the  
35 priorities set forth in Article 2 (commencing with Section 1810)  
36 of Chapter 1 of Part 3.

37 (3) The public guardian shall take the steps described in  
38 paragraphs (1) and (2) within 15 days of taking possession of an  
39 elder person's property pursuant to this section.



1 2963. (a) (1) A public guardian who has taken possession or  
2 control of the property of an elder person pursuant to this article  
3 is entitled to the reasonable costs incurred by the public guardian  
4 for the protection of the person or the property, together with  
5 reasonable fees for services, including, but not limited to,  
6 reasonable attorneys' fees, shall be payable from the estate of the  
7 elder person if any of the following apply:

8 (A) The public guardian or someone else is appointed as the  
9 temporary or general conservator of the estate.

10 (B) An attorney-in-fact, under a durable power of attorney, or  
11 a trustee, takes steps, or is notified of the need to take steps, to  
12 protect the estate of the elder person.

13 (C) An action is brought against the alleged financial abuser by  
14 the elder person, his or her conservator, a trustee, a fiduciary, or a  
15 successor in interest of the elder person, arising from a harm that  
16 the public guardian taking charge was intended to prevent or  
17 minimize.

18 (2) Any costs incurred by the public guardian pursuant to  
19 paragraph (1) shall be compensable as provided in Section 2902.  
20 Fees collected by the public guardian pursuant to this article shall  
21 be used for the activities described in this article.

22 (b) When a public guardian has taken possession or control of  
23 the property of an elder person pursuant to this article, the public  
24 guardian shall exercise reasonable care to see that the reasonable  
25 living expenses and legitimate debts of the elder person are  
26 addressed as well as is practical under the circumstances.

27 (c) Any person identified as a victim in a declaration described  
28 in Section 2964 may bring an ex parte petition in the superior court  
29 for an order quashing the certification issued by the public  
30 guardian as provided in subdivision (c) of Section 2962.

31 (1) Upon request by the petitioner, the court may defer filing  
32 fees related to the petition, and order the public guardian to  
33 authorize the release of funds from a financial institution to  
34 reimburse the petitioner the filing fees from assets belonging to the  
35 petitioner, but shall waive filing fees if the petitioner meets the  
36 standards of eligibility established by subparagraph (A) or (B) of  
37 paragraph (6) of subdivision (a) of Section 68511.3 of the  
38 Government Code for the waiver of a filing fee.

39 (2) The court shall quash the certification if the court  
40 determines that there is insufficient evidence to justify the



1 imposition on the alleged victim's civil liberties caused by the  
2 certification. If the certification by the public guardian was made  
3 in good faith, the public guardian may request the court to award  
4 attorney's fees, not exceeding five hundred dollars (\$500), which  
5 may be charged against the alleged victim's estate.

6 (3) If the court determines that there is sufficient evidence to  
7 justify the imposition on the alleged victim's civil liberties caused  
8 by the certification, the court may, in its discretion, do one or more  
9 of the following:

10 (A) Order disbursements from the alleged victim's assets, as  
11 are reasonably needed to address the alleged victim's needs.

12 (B) Appoint a temporary conservator of the alleged victim's  
13 estate, where the facts before the court would be sufficient for the  
14 appointment of a temporary conservator under Section 2250.

15 (C) Deny the petition.

16 (D) Award reasonable attorney's fees to respondent's attorney  
17 from the victim's estate.

18 (d) The public guardian shall serve or cause to be served a copy  
19 of the certification issued pursuant to Section 2962 on the victim  
20 by mail within 24 hours of the execution of the certification, or as  
21 soon thereafter as is practical, in the manner provided in Chapter  
22 4 (commencing with Section 413.10) of Title 5 of Part 2 of the  
23 Code of Civil Procedure.

24 2964. In counties participating in the pilot program under  
25 Section 2960, the declaration issued by a peace officer under this  
26 chapter shall not be valid unless it substantially complies with the  
27 following form:

28  
29 DECLARATION

30 PRINT OR TYPE

31 1. My name is: \_\_\_\_\_.

32 My badge number is: \_\_\_\_\_.

33 My office address and telephone number are:

34 \_\_\_\_\_

35 \_\_\_\_\_

36 \_\_\_\_\_.

37 2. I am a duly sworn peace officer presently employed by \_\_\_\_\_

38 \_\_\_\_\_, in the County of

39 \_\_\_\_\_, in the State of California.

- 1 3. On \_\_\_\_ (date) I personally interviewed \_\_\_\_ (victim) at \_\_\_\_ a.m./p.m. at  
2 \_\_\_\_ (address). The victim resides at \_\_\_\_ (address, telephone  
3 number, and name of facility, if applicable).  
4 4. There is probable cause to believe that:  
5 (a) \_\_\_\_\_ (Victim)  
6 is substantially unable to manage his or her financial resources or to  
7 resist fraud or undue influence, and  
8 (b) There exists a significant danger the victim will lose all or a portion  
9 of his or her property as a result of fraud or misrepresentations or the  
10 mental incapacity of the victim, and  
11 (c) There is probable cause to believe that a crime is being committed  
12 against the victim, and  
13 (d) The crime is connected to the victim's inability to manage his or  
14 her financial resources or to resist fraud or undue influence, and  
15 (e) The victim suffers from that inability as a result of deficits in one or  
16 more of the following mental functions:  
17

18 INSTRUCTIONS TO PEACE OFFICER: CHECK ALL BLOCKS  
19 THAT APPLY:

20 [A] ALERTNESS AND ATTENTION

- 21 ☐ 1. Levels of arousal. (Lethargic, responds only to vigorous and  
22 persistent stimulation, stupor.)  
23 ☐ 2. Orientation. Person \_\_\_\_ Time \_\_\_\_ (day, date, month,  
24 season, year), Place \_\_\_\_ (address, town,  
25 state), Situation \_\_\_\_\_ (why am I here?).  
26 ☐ 3. Ability to attend and concentrate. (Give detailed answers from  
27 memory, mental ability required to thread a needle.)  
28

29 [B] INFORMATION PROCESSING

30 Ability to:

- 31 ☐ 1. Remember, i.e., short- and long-term memory, immediate  
32 recall. (Deficits reflected by: forgets question before  
33 answering, cannot recall names, relatives, past presidents,  
34 events of past 24 hours.)  
35 ☐ 2. Understand and communicate either verbally or otherwise.  
36 (Deficits reflected by: inability to comprehend questions,  
37 follow instructions, use words correctly or name objects;  
38 nonsense words.)



- ☐ 3. Recognize familiar objects and persons. (Deficits reflected by: inability to recognize familiar faces, objects, etc.)
- ☐ 4. Understand and appreciate quantities. (Perform simple calculations.)
- ☐ 5. Reason using abstract concepts. (Grasp abstract aspects of his or her situation; interpret idiomatic expressions or proverbs.)
- ☐ 6. Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest. (Break complex tasks down into simple steps and carry them out.)
- ☐ 7. Reason logically.

[C] THOUGHT DISORDERS

- ☐ 1. Severely disorganized thinking. (Rambling, nonsensical, incoherent, or nonlinear thinking.)
- ☐ 2. Hallucinations. (Auditory, visual, olfactory.)
- ☐ 3. Delusions. (Demonstrably false belief maintained without or against reason or evidence.)
- ☐ 4. Uncontrollable or intrusive thoughts. (Unwanted compulsive thoughts, compulsive behavior.)

[D] ABILITY TO MODULATE MOOD AND AFFECT

Pervasive and persistent or recurrent emotional state which appears severely inappropriate in degree to the patient's circumstances. Encircle the inappropriate mood(s):

Anger	Euphoria	Helplessness
Anxiety	Depression	Apathy
Fear	Hopelessness	Indifference
Panic	Despair	

5. The property at risk is identified as, but not limited to, the following:

Bank account located at: \_\_\_\_\_

(name, telephone number, and  
address of the bank branch)

Account number(s): \_\_\_\_\_

Securities/other funds located at: \_\_\_\_\_

(name, telephone number,  
and address of  
financial institution)

Account number(s): \_\_\_\_\_

Real property located at: \_\_\_\_\_  
(address)

Automobile described as: \_\_\_\_\_  
(make, model/color)

\_\_\_\_\_  
(license plate number and state)

Other property described as: \_\_\_\_\_

Other property located at: \_\_\_\_\_

6. A criminal investigation will ☐ will not ☐ be commenced against: \_\_\_\_\_  
(name, address, and telephone number)

for alleged financial abuse.

BLOCKS 1, 2, AND 3 MUST BE CHECKED IN ORDER FOR THIS  
DECLARATION TO BE VALID:

- ☐ 1. I am a peace officer and a member of a Financial Abuse Specialist Team (FAST) in the county identified above.
- ☐ 2. I have consulted concerning this case with a FAST member who is authorized under subdivision (c) of Section 2952 to sign this declaration and who has signed below, indicating that he or she concurs that, based on the information I provided to him or her, or based on information he or she obtained independently, this declaration is warranted under the circumstances.
- ☐ 3. I have consulted concerning this case with an individual qualified to perform a mental status examination.

\_\_\_\_\_  
Signature of Declarant Peace Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Concurring Adult Protective Services Supervisor

2965. This article shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

O